



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 10-06912
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip Katauskas, Esq., Department Counsel
 John Glendon, Esq., Department Counsel
 For Applicant: Brad Jones, Personal Representative

March 25, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On December 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 5, 2011, and requested a hearing before an administrative judge. The case was assigned to me on February 8, 2011. DOHA issued a notice of hearing on February 10, 2011. I convened the hearing as scheduled on March 8, 2011. The Government offered Exhibits (GE) 1 through 6.

Applicant did not object and they were admitted into evidence. Applicant and one witness testified. She offered Exhibits (AE) A through G, which were admitted into evidence without objections. The record was held open until March 15, 2011, to allow Applicant to submit additional documents. Applicant did not submit additional documents and the record closed. DOHA received the hearing transcript (Tr.) on March 15, 2011.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.d and 1.f. She denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. She is not married. She has a grown son. She has worked for her present employer since January 2005. She has held a top-secret security clearance in her position. She completed her bachelor's degree in 2008.¹

There are nine debts alleged in the SOR. Applicant admitted in her answer that she owed the debts in SOR ¶¶ 1.d (\$44,000) and 1.f (\$34,197). The debt in SOR ¶ 1.d is a credit card debt and the debt in SOR ¶ 1.f is a defaulted car loan. Applicant has not addressed the credit card debt because she has been unsuccessful in contacting the creditor. She sent a certified letter to the creditor, but received no response.² The car loan debt is for a car she purchased in 2005 or 2006. The purchase price was \$55,000 and her monthly payments were between \$800 and \$900. The car was involuntarily repossessed. She reached a settlement agreement with the creditor on February 17, 2011, to pay \$23,677. She was required to make a \$6,000 down payment and then monthly payments of \$589 for 30 months. She stated she paid the \$6,000 down payment, but did not provide documents to prove her payment. The debts in SOR ¶¶ 1.d and 1.f are unresolved.³

Applicant disputes the debt in SOR ¶ 1.a (\$176) to a telephone company. She did not provide proof of her dispute. Applicant stated she settled and paid the debt in SOR ¶ 1.b (\$4,743) to a credit card company in March 2010. She did not provide documents to prove that she paid the debt. These debts are listed on her credit reports. These debts are unresolved.⁴

The debt in SOR ¶ 1.c (\$10,000) is a credit card debt. She did not have information on the debt, but believed she used it for expenses. Applicant was unsure about the debt in SOR ¶ 1.e (\$6,975). She stated she tried to reach out to the creditor

¹ Tr. 11, 23-25, 99-100.

² Applicant did not provide a copy of the certified letter.

³ Tr. 28-30, 33-38, 52-55, 62-63, 84-91; GE 3, 4; AE C is a copy of the proposed settlement agreement.

⁴ Tr. 39-43, 45; GE 3, 4, 5.

and address the debt. A credit report notes that a debt to the same creditor in SOR ¶1.e is disputed by the creditor, but it is unclear if it is the same debt as alleged. Applicant did not know anything else about this account. These debts are unresolved.⁵

The debt in SOR ¶ 1.g (\$14,913) is for a credit card. Applicant said she was confused about the debt. She believed she settled and paid it. She did not provide documents to prove she paid it. The debt is on her credit reports.⁶ The debt is unresolved.⁷

Applicant disputes the debts in SOR ¶¶ 1.h (\$243) and 1.i (\$68) because she does not believe they belong to her. She did not provide information about what, if anything, she has done to dispute the debts. The debts are not listed on her credit reports. I find in her favor on these debts.⁸

In her answer to the SOR, Applicant provided a letter from an attorney she hired. The letter is dated January 3, 2010,⁹ and confirms he has been hired “for the purpose of working with the credit bureaus to audit and verify the status of her credit reports.” The letter stated that according to Applicant there were inaccurate, invalid, and unverifiable accounts. It went on to say “we are requesting the appropriate investigative procedures” from the three credit bureaus. Applicant did not provide any additional information as to what actions her attorney may have taken. She had not talked to him recently.¹⁰

In November or December 2007, Applicant’s mother became ill. Applicant stated she began to incur additional expenses due to her mother’s illness. She used credit cards to help pay the expense of traveling to another state by plane and paid some of her mother’s expenses. She estimated that over a seven to eight month period she traveled to see her mother seven times and the cost of airfare, rental car, and sometimes a hotel, were about \$800 to \$900. She helped pay her mother’s mortgage a few times, which was between \$200 and \$300, and she paid some of her medical bills, which were about \$300 a month. She was also on family leave from June 5, 2008, to June 17, 2008, to be with her mother before she passed away in late June 2008. Applicant paid her funeral expenses, which were approximately \$2,500.¹¹

⁵ Tr. 46-48; GE 3, 4, 5.

⁶ Tr. 50-52; GE 3, 4, 5.

⁷ Tr. 63-67; GE 3, 4, 5.

⁸ Tr. 68-69.

⁹ A duplicate of the letter was provided as GE 6.

¹⁰ Tr. 43-44; Answer to SOR.

¹¹ Tr. 27-28, 76-78, 100-108; AE A.

Applicant stated her finances were in good order until she began assisting her mother. She indicated that the costs associated with her mother's illness caused her to experience financial problems in around April 2008. Applicant stated that she incurred large credit card debts primarily due to her mother's illness. She stated over the past three years she has been paying some of the debts she owes to collection companies. She has other active credit cards that she pays timely. When asked why she had such large debts that were beyond the amounts she paid to help her mother, she did not answer the question. When asked what she has spent her money on since her mother's death, she could not answer the question. She does not have a budget. Applicant stated she is current in paying all of her monthly expenses. She purchased a 2007 car with \$9,000 in cash. She took a loan from her 401(k) account to make the payment. She contributes 8% of her salary to her 401(k) retirement account. She also has \$28,000 in student loans that she is paying. She has three open credit cards that are current. She has about \$2,000 in her savings account and \$300 in her checking account. She rents an apartment and pays her utilities on time. She does not know where she spent her money the last three years.¹²

Applicant currently earns approximately \$108,000 annually. In addition, in the past she had a part-time job at a store and earned about \$5,000 annually. She also served as a secretary for a real estate investment company. She received compensation for her job and it was based on the amount she invested in the company. She received dividend payments from her investments. Applicant stated she was receiving about \$800 to \$900 a month from the company from about 2005 until late 2007. She stated the bank that financed the real estate project went bankrupt and she no longer received this income.¹³

Applicant stated that in approximately March or April 2008 she contacted a credit solutions company. She stopped using them in August 2010 because she learned they were taking her fees and not satisfying her debts. She did not provide information as to how much she paid to the company and for how many months. She believed the debt in SOR ¶ 1.c was included in the program, but she was not sure if the debt was settled. She intends to resolve all of her delinquent debts as quickly and as efficiently as possible.¹⁴

Applicant provided documentation with her interrogatories that showed she was making some payments to some other creditors in the past. She did not provide documentation regarding the debts listed in the SOR.¹⁵

¹² Tr. 28, 77-83, 91-94, 103-111.

¹³ Tr. 28, 30, 55-62, 109.

¹⁴ Tr. 48-50, 74, 78, 96-97.

¹⁵ Tr. 30-33.

Applicant's son testified on her behalf. He was aware that his mother was helping his grandmother. He believes his mother has a lot of integrity. He knows his mother has helped other family members financially, including himself. He did not know exactly how much money she gave to family.¹⁶

Applicant's supervisor provided a character letter. She noted that Applicant has an outstanding work ethic and her credentials are highly valuable. She is impressed with her performance and integrity. On many occasions she has gone above and beyond what is expected to deliver high quality customer service, sometimes working long hours to ensure the project runs smoothly. She consistently has high performance ratings. She demonstrates integrity and is always honest.¹⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

¹⁶ Tr. 112-119.

¹⁷ Tr. 70-75; AE B.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has seven debts totaling approximately \$114,828 that have been delinquent for several years and are unpaid or unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has not taken action to resolve her delinquent debts. I find that AG ¶ 20(a) is not established because Applicant's delinquent debts are ongoing, and not the result of circumstances making them unlikely to recur. She has a large amount of debt, but did not provide proof that they are not hers or that she has a plan for resolving them. She admits to owing at least two of them that total approximately \$78,197. Her failure to address her delinquent debts casts doubt on her current reliability, trustworthiness and good judgment.

Applicant stated her finances were fine until her mother became ill and then passed away. She has been employed by the same employer since 2005. She earns a substantial income. The amount of money she expended when her mother was ill does not equate to the large amount of debts she has incurred. She was unable to explain where she spent all of her money. Her mother's illness may have had some impact on her finances, which would trigger the application of AG ¶ 20(b) because the condition that resulted in the financial hardship was beyond her control. For full application of AG ¶ 20(b), however, Applicant must have acted responsibly under the circumstances. Applicant's mother passed away in June 2008. It has been two and half years since that event. Applicant failed to show she is acting responsibly in resolving her delinquent debts. I find AG ¶ 20(b) only partially applies.

Applicant has hired an attorney to help her dispute items on her credit report. She stated she was working with a debt consolidation company at one time. She did not provide supporting document to show actions she may have taken through the company or what she has done since terminating her agreement. She did not provide anything of

substance as to what her attorney has done for her. She stated she paid certain delinquent debts and disputed others. She stated she made the initial \$6,000 down payment as part of a settlement on one of her debts, but did not provide the documents to show that the payment was made. There is insufficient evidence to conclude Applicant has made good-faith efforts to pay overdue creditors or otherwise resolve her delinquent debts. Therefore, I find AG ¶¶ 20(c) and 20(d) do not apply. Applicant disputed the debts in SOR ¶¶ 1.h and 1.i. I did not find them on her credit report and therefore find in her favor on those two debts. Other debts she disputed, but failed to provide documented evidence to substantiate the basis of her dispute or provide evidence of her actions to resolve the dispute. I find AG ¶ 20(e) does not apply to those debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has held a security clearance without incident. She has incurred a large amount of consumer debt. She helped her mother when she was ill, but the amount she spent does not equate to the large amount of delinquent debt she has accumulated. She does not know how she spends her money. Although she has an attorney to help her dispute some debts, there was no evidence as to what actions, if any, he has taken. Applicant admitted she owes more than \$78,000 on two debts. She did not provide proof that she has a payment plan or is resolving her delinquent debts. She has failed to meet her burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these

reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge